In the appeal before this court, counsel for the appellants/defendants raised a further technical objection that the summons prayed for final judgment and not for leave for final judgment. This court saw no merit in this objection as the application in substance was for leave to sign final judgment. Counsel further argued that the agreement of November 27, 1971 did not comply with section 4(3) of the Civil Law Ordinance re assignment of rights to assignee to vest in them all the debts owing to the assignor. If the Senior Assistant Registrar was persuaded to state the defence was a sham, a consideration of this defence would more than put the seal on that description. A reading of the agreement makes it quite obvious that the transaction was between the same major parties who were reconstituting a private business into a private limited company under the Companies Act, and thus by this agreement providing the necessary assignments so that the new company could carry on the same business as a private limited company. Notice was given of the transfer to the defendants and therefore the defendants were bound by the assignment. Notice of assignment is valid even if no time is given.

As far as the plea of limitation was concerned, the Senior Assistant Registrar had given proper reasons why the claim was not statute-barred.

When one considers the defence and all the numerous affidavits filed by the defendants, the inescapable conclusion one has to come to is

(1) the defendants were merely denying the debt in order to take advantage of the reconstitution of their creditors into a private limited company.

(2) Their defence and affidavits were evasive. They stated they purchased goods from third parties while failing to disclose who the third parties were. It was only the plaintiffs' affidavits which disclosed that the so-called third parties were none other than the plaintiffs' predecessors in title or associates and this the defendants were fully aware of but did not wish to disclose at the start.

(3) While readily accepting receipts in the name of Hup Fatt Tin Mining Kongsi and Hup Fatt Kongsi at the material times in the full knowledge that it referred to one and the same people, in order to avoid a judgment they were attempting to take advantage of the difference in names without establishing that they were two different bodies.

Atkin's Court Forms 2nd Edn. Vol. 29 has this to say on page 138:

"The object of the defendant's affidavit in answer is to satisfy the Court that there is an issue or question in dispute to be tried or that there ought for some other reason to be a trial. This object cannot be achieved by a mere general denial of indebtedness nor by raising facts which do not constitute a defence to the claim....

If questions of fact are in dispute, the defendant's affidavit should not merely deny the facts alleged by the plaintiff but depose to his own version of the facts....

Generally speaking the facts upon which the defence relies are usually capable of concise expression and a lengthy affidavit is unnecessary: indeed a long, rambling affidavit full of irrelevant detail may bear the appearance of being a sham...."

A study of the numerous defendants' affidavits in reply, when attempts are made to raise triable issues when compelled to by the plaintiffs' affidavits cannot but lead to the conclusion that the defence is not *bona fide* but merely an attempt to delay the process of the court and delay the delivery of judgment. Under the circumstances even final leave may have been the proper order to be given (see *Foong Weng Tat* v. *Vu Siew Chin*),[1] but as there was no cross-appeal, if at all the defendant feels there are triable issues, which this court does not see, the defendant is not precluded from defending as he will still be able to defend the suit by complying with the condition.

For the reasons stated above I dismissed the appeal with costs and confirmed the Registrar's Order.

Appeal dismissed.

Solicitors: *J. R. Devadas; Ngan & Tan.*

LEONG KA KONG v. PUBLIC PROSECUTOR

[A.Cr.J. (Abdul Hamid J.) November 7, 1975]
[Kuala Lumpur — Selangor Criminal Appeal No. 115 of 1975]

Criminal Law and Procedure — Appeal — Armed robbery — Appellant convicted on 4 charges of robbery with deadly weapons — Sentenced to 7 years' imprisonment on each charge and 3 strokes of the rotan — Imprisonment sentences ordered to run consecutively — Appeal against sentence — Circumstances in which appellate court would interfere.

Penal Code, ss. 34, 392 and 397 — Armed robbery with deadly weapon — Sentence.

The appellant was convicted and sentenced on 4 charges of robbery with deadly weapons. The learned president sentenced him to 7 years' imprisonment on each charge with 3 strokes of the rotan, the imprisonment sentences to run consecutively. The appellant appealed against those sentences.

Held, dismissing the appeal: (1) it is settled law that sentences should not be interfered with by the appellate court merely because the individual presiding in the higher court might, having personal views on the matter, have passed a different sentence. The court should not therefore interfere with the lower court's discretion unless there is apparent on the face of the record a manifest error either in law, or, in considering the facts and circumstances of the case;

(2) in this case the learned judge quite rightly considered the nature and gravity of the offences committed by the appellant and also the facts and circumstances surrounding the case.

CRIMINAL APPEAL

Lamin bin Hj. Mohamed Yunus (Senior Federal Counsel) for the Public Prosecutor.

Lall Harcharan Singh for the appellant.

Abdul Hamid J. (delivering oral judgment): Now, in this case, the appellant was charged with the following offences:—

(1) "That you on February 1, 1975 at about 4.20 p.m. at BP Petrol Station, Jalan Gasing, in the District of Petaling Jaya, in the State of Selangor, with another still at large, in furtherance of the common intention of all, robbed one Chua Siew Bee of cash $1,150, and at the time of committing the said robbery used a deadly weapon, to wit, one dagger, and that you have thereby committed an offence punishable under section 392 of the Penal Code read with sections 34 and 397 of the Penal Code."

(2) "That you on May 3, 1975 at about 3.30 p.m. at No. 27/A, Jalan 52/1 (Butterfly Hair Dressing Saloon), Petaling Jaya, in the State of Selangor, with one another (now in custody), in furtherance of the common intention of all, robbed one Loo Suan Tee of cash $400 and four gold chains valued at $1,100 and at the time of committing the said robbery used deadly weapons, to wit, one Firearm and one Bearing Scraper, and that you have thereby committed an offence punishable under section 392 of the Penal Code read with sections 34 and 397 of the Penal Code."

(3) "That you on May 5, 1975 at about 3.10 p.m. at No. 164, Jalan Chan Sow Lin, in the City of Kuala Lumpur, with one another (now in custody), in furtherance of the common intention of all, robbed one Ng Koon Leong of cash $9,000 and at the time of committing the said robbery used deadly weapons, to wit, One Revolver and One Dagger, and that you have thereby committed an offence punishable under section 392 of the Penal Code read with sections 34 and 397 of the Penal Code."

and

(4) That you on May 20, 1975 at about 8.50 p.m. at No. 106, Jalan Bandar (Singapore Hair Dressing Saloon) in the City of Kuala Lumpur, with one another now in custody, in furtherance of the common intention of all, robbed one Yap Thoong Chean and others of one .32 Walther Automatic Pistol with six rounds of ammunition, One Rolex Watch valued at $5,200, One Diamond Ring valued at $2,800, One Gold Chain valued at $800, cash $1,400 and another gold chain valued at $100, and at the time of committing the said robbery used a deadly weapon, to wit, a firearm, and that you have thereby committed an offence punishable under section 392 of the Penal Code read with sections 34 and 397 of the Penal Code."

On conviction, the learned president sentenced the appellant to seven years' imprisonment on each charge with three strokes of the rotan, the imprisonment sentences to run consecutively. It is against these sentences that the appellant now appeals. Encik Lall Harcharan Singh counsel for the appellant has urged the court to consider certain mitigating factors and also to order that the sentences to run concurrently instead of consecutively. On the other hand, the learned deputy public prosecutor has stressed the gravity of the offences committed and has submitted that, in this case, there is no question of repentance.

Insofar as this court is concerned, in exercise of its appellate jurisdiction, it shall consider whether the sentences of the court below were wrong in law or were they manifestly excessive on the facts and circumstances justifying interference. It is settled law that sentences should not be interfered with by the appellate court merely because the individual presiding in the higher court might, having personal views on the matter, have passed a different sentence.

Our system, as practised today, has vested the magistrates and presidents with wide discretionary power in the matter of the amount of punishment. Such discretionary power must not, however, be exercised in complete disregard of the facts and circumstances of the case. In point of fact, the discretion must be exercised judicially. Now, in consideration of what I have said, the court should not therefore interfere with the lower court's discretion unless there is apparent on the fact of the record a manifest error either in law, or, in considering the facts and circumstances of the case. The nature of the offences committed in particular that which is violent in nature and one that involves the security of life and property, must necessarily be viewed gravely.

Robbery, especially one in the commission of which deadly weapon or weapons are used is a crime which not only involves disastrous consequences to others but afford evidence of the odious qualities of the person who commits it. Crimes involving great moral atrocity as well as great public mischief should be met with deterrent sentences.

In the instant case, the learned president quite rightly considered not only the nature and gravity of the offences committed by the appellant but also the facts and circumstances surrounding the case. The learned president, also considered what is common knowledge namely the fact that there has been an increase of crime in Kuala Lumpur.

On the facts, I am unable to say that, by ordering the imprisonment sentences to run consecutively, there is a manifest error of law or that the sentences were, in the circumstances, manifestly excessive.

For these reasons, I hereby dismiss the appeal.

Appeal dismissed.

Solicitors: *L. H. Singh & Co.*

RE NGAN KIM YONG

[O.C.J. (Abdoolcader J.) March 31, 1975]
[Ipoh — In Bankruptcy No. 3 of 1971]

Bankruptcy — Caveats against properties — Withdrawal — Bankruptcy Act, 1967, s. 85(3).

The bankrupt and one *S* were partners of a firm. The bankrupt sued *S* for accounts of the partnership. He then entered private caveats upon the titles of properties belonging to *S*. A receiving order was made against the partnership and an adjudication order were made against the bankrupt and *S*. The Official Assignee in the bankruptcy of *S* asked for leave to withdraw the caveats.

Held: (1) in view of the bankruptcy of *S* the bankrupt no longer had any remedy against any properties belonging to *S*, the other bankrupt partner;

(2) the bankrupt would only be able to claim by lodging a proof of debt in the bankruptcy of *S*.

[Editorial Note: An appeal in this case (Federal Court Civil Appeal No. 33 of 1975) was dismissed by the Federal Court on February 2, 1976.]

BANKRUPTCY.

Lee Yee Kuang for the Official Assignee.

Abdul Rahim Noor (*Lim Cho Hock* with him) for the judgment-debtor.

Abdoolcader J.: The Official Assignee applied under the provisions of section 85(3) of the Bankruptcy Act, 1967, for directions in relation to the withdrawal of private caveats lodged by the bankrupt against certain pieces of land registered in the name of and belonging to another bankrupt who is her partner in a firm known as Eastern Building Company.

The facts pertaining to this application are fully set out in the application of the Official Assignee, and I need only state briefly that the bankrupt and one Sit Yu Yoong were partners in a firm of housing developers styled Eastern Building Company, and in an action instituted by Sit Yu Yoong against the